

### **III. REMARKS**

Claims 1-22 are pending in this application. By this amendment, claim 21 has been amended herein. Applicant does not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Furthermore, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is requested.

Claim 21 is objected to for allegedly depending from the wrong independent claim. Applicant has amended claim 21 to correct the claim. Accordingly, Applicant requests withdrawal of the objection.

#### **A. REJECTION OF CLAIMS 1-22 UNDER 35 U.S.C. §101**

In the Office Action, claims 1-22 are rejected under 35 U.S.C. 101 as allegedly directed to non-statutory subject matter. Specifically, the Office alleges that the rejected claims are non-statutory because the “Examiner asserts that the current state of the claim language is such that a reasonable interpretation of the claims would not result in any useful, concrete or tangible product.” Office Action, page 2, item 1. Further, the Office asserts, *inter alia*, that the claims 1, 7, and 12 do not “produce a tangible output.” Office Action, page 2, item 1. Applicant respectfully traverses the rejection in that the claimed invention provides, *inter alia*, tangible results.

Applicant first points to the United States Patent and Trademark Office's Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, (Interim Guidelines) issued 26 October 2005, which regarding the issue of tangibility states:

The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a Sec. 101 judicial exception, in that the process claim must set forth a practical application of that Sec. 101 judicial exception to produce a real-world result. *Benson*, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had "no substantial practical application."). "[A]n application of a law of nature or mathematical formula to a . . . process may well be deserving of patent protection." *Diehr*, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also *Corning*, 56 U.S. (15 How.) at 268, 14 L.Ed. 683 ("It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . ."). In other words, the opposite meaning of "tangible" is "abstract."

Applicant asserts that the Interim Guidelines obviates the basis for the rejection. For under the *Benson* and *Corning* cases, and the Guidelines on whole, the present invention undoubtedly has a practical application, namely, *inter alia*: modeling the performance of mainframe systems using LPARs to e.g., meet customer needs. Further, the present invention's modeling and simulation tools address more accurately those situations where the total utilization of a computer processor may approach 100%. This has a practical, beneficial result (e.g., more efficient computer use). See e.g., ¶¶[0004]-[0006] for a discussion regarding the shortcomings in the related art. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Also, Applicant respectfully points to relevant section of the United States Code recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. 35 U.S.C. §101.

To this extent, the code requires that the invention be “new and useful” and not that the result be “useful, concrete, and tangible”, or a “useful, concrete, and tangible product”, or even a “useful, concrete, and tangible output”, as asserted by the Office. The USPTO has chosen, in its Interim Guidelines, to use concreteness of the result and tangibility only as factors in making a determination as to whether the invention is useful. However, the Guidelines themselves state that concreteness of the result and tangibility are not dispositive in and of themselves, but merely factors in determining whether the invention is useful. In any event, whether required or not, the present invention is tangible. Accordingly, Applicant requests that the rejection be withdrawn.

#### **B. REJECTION OF CLAIMS 1-22 UNDER 35 U.S.C. §102 and 103**

Claims 1, 2, 7, 12, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooney (‘Intelligent Resource Director’, 2002), hereinafter “Rooney”. Claims 3-6, 8-11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooney in view of Kyne (‘z/OS Intelligent Resource Director’, 2001), hereinafter

“Kyne”. Claims 16-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rooney.

Applicant traverses the rejections for the following reasons. Applicant respectfully submits that all claims are allowable over the cited art because the cited art does not teach or suggest all of the claim limitations.

First, with respect to independent claim 1, Applicant respectfully submits that the cited reference fails to teach or suggest, *inter alia*, calculating a time slice percentage for the LPAR based on the resource percentage. See claim 1 and similar language in independent claims 7 and 12.

In rejecting claim 1, the Office alleges that Rooney discloses “a system for calculating a time slice percentage for the LPAR based on the resource percentage: page 573 paragraph 1: *processor\_using\_samples*”. Office Action, page 3, item 2.

Applicant has read the cited section regarding *processor\_using\_samples* (i.e., first paragraph on page 573) of Rooney, and Rooney in general, and respectfully contends that the use and definition of *processor\_using\_samples* in Rooney is not the same as the limitation in the claimed invention regarding calculating a time slice percentage, as that term is used herein. For example, Rooney states that *processor\_using\_samples* “measures the percentage of time that the average work unit would execute on a CPU if it were to experience no CPU delay.” Page 573, first paragraph. This calculation in Rooney merely finds an average percentage of time that an “average” work unit can execute and then merely multiplies this “average” times the quantity of work units to find

a total demand. In other words, there is no consideration and/or weighting as to different types of LPARs and/or resource allocation amongst the various LPARs. Conversely, as the equation in paragraph [0023] of the instant disclosure shows, the time slice percentage (i.e., TS%) calculation includes the factor, RP% (i.e., resource percentage), which in turn includes, *inter alia*, consideration of weighting and/or resource allocation. Applicant notes that paragraph [0006] of the instant application discusses the type of shortcomings that prior systems have and, it appears, Rooney also exhibits; namely: the lack of considering the interaction and/or the variability of capacity of other LPARs. In sum, this cannot amount to a clear teaching and/or suggestion of the aforementioned limitation.

In sum, Rooney does not teach or suggest all of the features found in claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to claim 1. Further, Kyne does not remedy the deficiencies of Rooney.

Independent claims 7 and 12 are rejected under the same rationale as claim 1. As a result, Applicant herein incorporates the arguments listed above with respect to claim 1.

With respect to dependent claims 2-6, 8-11 and 13-15, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Second, with respect to independent claim 16, Applicant respectfully submits that the cited reference fails to teach or suggest, *inter alia*, a method for modeling workload

performance of a **plurality** of LPARs (logical partitions) in a computer simulation, comprising, *inter alia*, providing a model for each LPAR specified in the computer simulation, wherein each model includes a defined consumption that is **dependent on a consumption of the other LPARs**. Emphasis added. See claim 16 and similar language in independent claims 18, 19 and 20.

In rejecting claim 16, the Office alleges that Rooney discloses the aforementioned limitation, by just generally citing page 575, 2<sup>nd</sup> paragraph. Office Action, page 12, item 4.

Applicant has read the cited section (i.e., second paragraph on page 575) regarding the alleged disclosure in Rooney, and Rooney in general, and respectfully contends there is no teaching or suggestion whatsoever of any type of modeling for each LPAR that depends on consumption of other LPARS, as in the claimed invention. Applicant surmises that the Office is perhaps contending that the last sentence in the second paragraph on page 575 is possibly the specific, adequate disclosure for the claimed features. This sentence reads: “At the beginning of the policy interval, each system writes its LDE to the coupling facility and reads the LDE of every other member of the LPAR cluster into local storage for easy access in later processing.” Applicant contends that this general statement does not amount to adequate teaching or suggestion for providing a model for multiple LPARs; nor of a defined consumption; nor even of a defined consumption that is *dependent* on a consumption of the other LPARs, as in the claimed invention. There is simply inadequate disclosure in any of Rooney for these

features. In sum, this cannot amount to a clear teaching and/or suggestion of the aforementioned limitation.

In sum, Rooney does not teach or suggest all of the features found in claim 16. Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to claim 16.

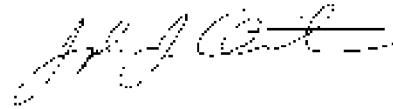
Independent claims 18, 19 and 20 are rejected under similar rationale as claim 16. As a result, Applicant herein incorporates the arguments listed above with respect to claim 16.

With respect to dependent claims 17 and 21-22, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. The dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

#### IV. CONCLUSION

In light of the above remarks, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,



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Joseph J. Christian

Reg. No.: 51,560

Hoffman, Warnick & D'Alessandro LLC  
75 State Street, 14<sup>th</sup> Floor  
Albany, New York 12207  
(518) 449-0044